

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MONSANTO COMPANY,  
MONSANTO TECHNOLOGY LLC

Plaintiffs,

V.

Case No. 4:09-cv-00686 (ERW)

E.I. DUPONT DE NEMOURS AND  
COMPANY and PIONEER HI-BRED  
INTERNATIONAL, INC.,

Defendants.

**MOTION TO COMPEL PRODUCTION OF RECALLED DOCUMENTS**

Pursuant to Paragraphs 25-26 of the Protective Order entered June 28, 2010 (Docket No. 238), Plaintiffs, Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”), respectfully move this court to compel Defendants, E.I. du Pont de Nemours and Company (“DuPont”) and Pioneer Hi-Bred International, Inc. (“Pioneer”) (collectively “Defendants”) to produce five documents which Defendants produced and subsequently recalled as privileged and to reopen deposition testimony to allow for questioning concerning those documents. Monsanto sets forth its grounds for relief in the Memorandum of Law in Support of said Motion with Exhibits 1, 2, 3, and 4, filed concurrently herewith.

Monsanto's counsel initially challenged Defendants' privilege claims with respect to each of the recalled documents in person at the time of the deposition, but defense counsel failed to articulate a proper privilege basis. Subsequently, by letter dated February 2, 2011, Monsanto counsel John Rosenthal notified defense counsel Thomas Fleming and Amy Mouser of

Monsanto's challenges to 48 documents recalled as privileged, including the five documents currently at issue. Monsanto articulated specific challenges to each of the five documents subject to this motion, identified by their Bates numbers, in a log sent via email from Monsanto counsel Rebecca Ross to defense counsel Hershel Wancjer on February 9, 2011.

Dated: February 16, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was filed electronically with the Clerk of Court via the Court's Electronic Filing System, and was served by operation of the Court's ECF system, this the 16th day of February, 2011:

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